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EDITORIALS

THE PRACTICE OF LAW: IS IT A PROFESSION OR A BUSINESS?

Nothing that concerns the integrity of the legal profession is foreign to this JOURNAL. It has time and again lifted its voice for purity and honesty in a profession that is going through a critical period.

The vast transforming changes that have taken place in the business and industrial life of the country have reacted upon the practice of law. Because of the added reasons of congestion, conglomeration, and quality of persons in a city, cities have grown to be the plague spots of the commonwealth. Experienced lawyers like Theron Strong of New York bear witness to the metamorphosis of the legal profession into a commercial business. And all within the memory of middle aged men. Twenty-five years ago the bar of New York city was eminently respectable. Today it is honeycombed with shysters, ambulance chasers, pettifoggers, persons unmindful or ignorant of traditions, bent with immorality, and heedless or defiant of law. Men who value their rectitude more than their success are abandoning the profession for more congenial fields; and many are being dissuaded from entering what is generally considered the graveyard of truth.

The New York County Lawyers' Association was born years ago. The largeness and the importance of the work it has done through its committees and its members working in other ways cannot be overestimated. It began with the democratic idea of enclosing within its fold the great majority of the legal profession in New York city. This was by no means an easy task because of the indifference of the members of the profession to its responsibilities. This indifference it was the hope and the labor of the association to change to warmth. It has had the usual Grievance Committee. But very soon the need for more inclusive work became manifest. It is the duty of the profession not only to expel members who prove unworthy, but also to see to it that no unworthy member enter it, and that no one without the requisite license be allowed to receive the emoluments of the office of lawyer without being subjected to its responsibilities. And so, a committee, the first one, I believe, of its kind in any part of the country, backed by such a powerful organization, came forth bearing the name of the Committee on the Illegal Practice of Law. This committee has aroused the profession, and the public. It has struck terror into the hearts of men who for long preyed upon the innocent public, and has protected large

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numbers of laymen who otherwise would have fallen victims to them. Soon another committee was formed; it, too, was born of the peculiar conditions with which New York city is surrounded. The number of ethical questions raised is so great, and the quality sometimes so difficult of answer that a Committee on Professional Ethics was instituted. This committee is now known throughout the country because of the excellent work it has done; and the questions asked of it and the answers have been widely published.

Recently Question 47, containing many divisions and subdivisions, was published with the answer to it. The *Commercial Law Quarterly* immediately took up the challenge and published the New York County Lawyers' Association Committee's question and answer, and followed them with a categorical and flat denial in the shape of a discussion, and substitute questions and answers. To bring the matter clearly and squarely before the reader, I append the main questions and answers of both the committee and the *Commercial Law Quarterly*.

The question referred to:

"Question 47—(N. Y. Co. Lawyers' Assn.) IX. (a) May A. B., a lawyer having a commercial law practice, pay a fee to M. W. O., a list made up of lawyers, and in which collection agencies appear, for the privilege of having his name appear on such lists?

"Answer—Yes: provided the form of the announcement is not otherwise objectionable. (See I (b) advising the insertion of a plain professional card); provided also that the amount he pays to M. W. O. is not determined by the amount realized by A. B.

(b) "Does it make any difference as to its professional propriety that the list is used exclusively for and by lawyers, or is intended to be circulated also among laymen? Answer: No.

(c) "Does it make any difference as to its professional propriety that the charge of the list varies according to the amount of business received by the lawyer through such a list? Answer: Yes: since it necessarily involves a division of the lawyer's professional fees in consideration of the securing of employment for him by the person with whom he divides his professional fees.

(d) "Does it make any difference that the list in connection with its publication or circulation maintains a complaint department at its own expense, adjusting differences arising out of charges earned or claimed, and issues for each representative in the list a surety bond guaranteeing the faithful performance of duty? Answer: Yes: it is derogatory to the essential dignity of the profession to seek employment by offering, or permitting another to offer, a bond to guarantee his honesty or efficiency."

The *Commercial Quarterly* retorts with the following: Question 2—(p. 17) Aug.-Sept.-Oct., 1914.

"Is it proper for attorneys to divide fees with attorneys and collection agencies and managers from whom they receive business? Answer: Yes.

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"Is it proper for an attorney not representing a creditor to receive of an attorney for the debtor a list of claims against the debtor for the purpose of such receiving attorney becoming attorney for such creditors?"

Answer: Yes.

"*Question 16* (p. 19). May an attorney who receives a claim from a collection agency and performs legal services in connection therewith, divide his fee with the collection agency?" *Answer:* Yes.

The *Quarterly* publishes a long list containing the names of several thousand attorneys with offices in all of the states of the Union, with descriptions of their qualifications, which, in some cases, go beyond the requirements of the American Bar Association, and the New York Bar Association; and also guarantees the faithful performance of duty by the attorneys in the list.

The cleavage then is evident. The questions before the profession are these:

Shall fee splitting with laymen be permitted?

Shall solicitation of law employment be allowed, similar to the solicitation for the purchase of rubber?

Shall the guaranteeing of a lawyer's honesty and efficiency, either by himself or by another, be permitted?

To put the question in a more general way:

Is law a profession or a business?

May the methods of business be carried over to the practice of law?

If not all methods, may some? And if so, what are they?

Is law for private gain, or public advantage?

Is law a privilege, or a right?

Physicians and surgeons have gone on record against fee splitting. But the new type of lawyer would not only allow fee splitting among attorneys (a thing which *under proper safeguards* I see no reason for not permitting)—but allow laymen to participate in the gains of a profession to which they are not or cannot be admitted. Again, the practice of law is already so distasteful that business men with business sense, and no pride in the traditions of a noble profession, are swamping the few who still strive to maintain its pristine vigor and purity. Shall we allow the heaven to become too small for the lump? The practice of law has become a wild scramble for cases. This, it may be said, is the struggle for existence and the survival of the fittest. But such a mad struggle, and such a survival of the fit is derogatory to the profession, and harmful to the community. It may pay to advertise in sonorous and stentorian tones, but it is not lovely. Modesty no more exists: the bluff business man, clad in shining armor, and with mailed fist, or clothed in suave, insinuating, pietistic garb, has displaced it. The very terms of the law are business terms: the whole vocabulary of

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the lawyer is a business vocabulary. The law has succumbed to the machine guns of business—business the omnipotent, the omnipresent. Our everyday conversation is full of business phraseology. Even the language of our hearth has lost its former sweetness, delicacy, and spirituality, and acquired the raucousness, the coarseness, and the vulgarity of chesty business.

Once more, nothing shows the depth of the descent into Avernus clearer than the guaranteeing of the honesty of lawyers. The fact that associations, or individuals will be bound for the good conduct of lawyers manifests not only business enterprise carried into law practice, but is revelatory of a state of the profession which is none too hopeful. The increasingly large numbers of frauds committed by attorneys, especially in large cities, is appalling. The breaches of professional ethics, morals, and law perpetrated by them are paralyzing. There are breaches of trust, there are bold-faced swindles, and secret thefts. Not a day passes but that a practicing lawyer has some instance of this truth brought to his attention. The state of affairs is so bad, the corruption has become so ingrained that even when attorneys are taken over by the state from private business these attorneys do not transfer their allegiance, or if they do, they bring with them the pestilence of fraud, larceny and blackmail. A banking institution recently failed. The State Banking Superintendent assumed control for the benefit of the depositors. The whole real estate department of the bank that had been doing a rustling business for some years was taken over by the state to save expense and time. An attorney in this department, to my knowledge, made an arrangement with the attorney for the lessee of a house owned by the bank, by which, for a consideration of two hundred dollars, he would delay an action for summary eviction for two months, and enable the lessee to obtain two months' rent, amounting to one thousand dollars, and keep it. And he was a man of his word; the depositors were defrauded.

Such things as these are so common as not to cause surprise. They are in the day's happenings, and no lawyer is taken aback by any such information. What are the causes and what the remedies that may be applied? These are the important questions.

No one can accuse me of being a rabid hater of immigrants. On the contrary, my writing upon the subject of immigration shows a tenderness to them. Nor do I wish to be understood as holding the opinion that natives of America are universally moral. Indeed, it is plain that modern business and large cities have contaminated even those who might be expected to know better: even those whose family traditions, and social connections would seem to prove insuperable obstacles to

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crime and dishonesty. But there is no doubt that the problem of evil in the profession has been augmented, and magnified, till it is enormous and threatening to very existence, by the presence of large numbers of half baked lawyers who, though shrewd, are completely unscrupulous: lawyers whose preliminary education has been obtained in six months, and whose law course has extended over two hours an evening, five evenings a week for thirty weeks; who came to this country when they were young or middle aged or old; who do not speak English and never will; who scrimp and save for a few years and allow their families to do the same, till all too soon they rise into the clear air of the heavenly ether, called law, and are then prepared to descend like the vulture upon the prey they have so long been hungering for. These men with no money, no connections, no rank, no sense of responsibility, no loyalty to the profession, no knowledge of its deeds and its traditions, no glimmering of its dignity and importance, with no sense or feeling of their place in the community, with no desire except the ravenous appetite of the starving tiger—these are the warp and woof of the legal “profession” in New York city.

Education is potent, but not omnipotent. Macauley said that a gentleman’s education begins with his grandfather. We cannot all have distinguished heredity; but society may so order matters that the best education will be furnished. We must elevate business, because unless business is clean there will always be temptations too strong for even well disposed individuals, and business will work its insinuating and contaminating way into law. We must raise the standards of the legal profession. The twenty-eight or forty-eight or sixty Regents’ points will have to go the way of all pernicious things. The law course should be a thorough theoretical and practical course—really practical—not the farce it is in New York, where attorneys, as a rule, perjure themselves in making affidavit as to the services in their office of candidates for admission; or if they do not, they certify to what, though they do not know it, is no more practice than serving summonses and complaints in law practice. The profession itself should do some housecleaning, and engage in educational and moral propaganda. The government should see to the distribution of immigrants. If not, and the problem grows too large to handle otherwise, I shall not be surprised to see recourse to restriction of immigration.

If anyone believes this to be screeching, and not “sane, sober, scientific” discussion, I should advise him to count twenty before he condemns. He may turn out to be a closet economist, or philosopher. When the story of the “Innocents” appears, as it will, the reader will find some amusing illustrations of the unconscious ineptitude of

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“scientific” individuals who stand on the mountain heights aloof, far from the practical affairs of men, and judge human thought, and human passions with the coldbloodedness of a salamander.

ROBERT FERRARI.

MILITARISM AND PRISONS.

During the month of July, this summer, while visiting prisons and workhouses in England, France and Germany, I was struck with the large proportion of ex-soldiers (chiefly line and non-commissioned officers) in their staffs. Two things, one a theory, the other a concrete governmental problem, may be held accountable. The theory is that routine and stiff discipline are the bases of sound prison policy; and that only military men have any real comprehension of the meaning of discipline. The governor of the Borstal Institution, for example, told me that practically all his subordinates were ex-soldiers, and frankly expressed his opinion that civilians were no good in penal institutions because they lacked an understanding of what steady, rigorous discipline, obedience, or subordination signify, and hence usually prove themselves quite unable to maintain that order which marks so strongly English penal institutions. I found the same faith in the soldier and his discipline in France and Germany. The governmental problem is the duty, rightfully or wrongfully assumed, of finding suitable employment for ex-soldiers who have enlisted under the voluntary system of recruitment. The Prison Commission at the home office frankly confesses that it is constantly between two fires: on the one side are the reformers who clamor for less military routine or mere mechanical “discipline,” and for more flexibility in the prison administration, with discipline through constructive educational means. On the other, are the ex-soldiers who must be provided with suitable jobs.

In the present crisis the most interesting feature of the prison problem is the disorganization of the penal machinery through calling to the colors “territorials” and other classes of military reserves. By the middle of August, English prisons had lost at least three hundred officers, with the prospect of still further losses. No doubt continental prisons suffered equally, if not more severely. The moral is that whether they want to or not, the prisons must hereafter recruit their staffs more freely from civilian sources. It will be an excellent step in advance if this emergency opens the way to regular training courses for the prison service. The University of London through some of its departments would seem admirably fitted to jump into the breach to this purpose.

We should not be in the least surprised if the European war has